

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 CLARK COUNTY ASSOCIATION OF
6 SCHOOL ADMINISTRATORS,
Petitioner,

7 vs.

8 BOARD OF SCHOOL TRUSTEES OF THE
9 CLARK COUNTY SCHOOL DISTRICT,
Respondent.

ITEM NO. 513A

CASE NO. A1-045721

DECISION

10 For Petitioner: Thomas D. Beatty, Esq.

11 For Respondent: C.W. Hoffman, Jr., Esq.
12

13 **STATEMENT OF THE CASE**

14 On October 17, 2001, the Clark County Association of School Administrators (hereafter
15 "Association") filed a complaint and petition for declaratory order. On January 3, 2002, the
16 Board of School Trustees for Clark County School District (hereafter "School District") filed a
17 motion to dismiss. The Local Government Employee-Management Relations Board (hereafter
18 "Board") issued an order on February 13, 2002 denying the motion. The parties filed prehearing
19 statements, and this matter was scheduled for hearing.

20 On October 21, 2002, the Board held a hearing in this matter, which was noticed in
21 accordance with Nevada's Open Meeting Law, at which time the Board heard oral arguments
22 from counsel, received evidence, and heard testimony from two (2) witnesses, namely, Dr.
23 Edward Goldman and Allin Chandler.

24 The Board's findings are set forth in the following Discussion, Findings of Fact and
25 Conclusions of Law:

26 **DISCUSSION OF TESTIMONY & EXHIBITS**

27 Allin Chandler testified first. He had been the Executive Director of the Association until
28 July 2002, and has been a member of the Association since the 1970s. As an executive director,

1 he negotiated the collective bargaining agreements (hereafter "CBA") with the School District.
2 Under the prior leadership of Superintendent Brian Cram, allegedly numerous confidential
3 employees and at-will status employees were allowed to enter into employment agreements
4 rather than utilizing the CBA. There were approximately 38 such proposed contracts. This
5 resulted in two prohibited practices cases being filed with the Board in 1990. The Board entered
6 Orders # 259 and #260 dismissing those cases when the parties achieved a settlement. The
7 Board did not hear the merits of the cases, but merely entered the order for dismissal upon the
8 presentation of the parties' stipulation. As a result of the settlement; however, the parties agreed
9 to list certain confidential employees in their CBA. See Association Exhibit 6, §16-6. These
10 categories of employees have remained "essentially" unchanged until current Superintendent
11 Carlos Garcia's reorganization. Chandler also stated that Dr. Edward Goldman and himself
12 agreed to the original 38 confidential employee positions and further agreed that new positions
13 could not be added without negotiation. Dr. Rulffes' prior position was identified as §16-6-9.
14 Mr. Chandler also testified that the prior administration used the phrases "confidential
15 employee" and "at-will" interchangeably, although they are not necessarily synonymous.

16 Dr. Goldman and Superintendent Garcia wanted to obtain a greater salary for certain
17 employees under the reorganization plan because of increased responsibility. Dr. Rulffes could
18 not receive the anticipated salary as he did not meet the requirements for that step, e.g., 20 years
19 of service within the School District. Dr. Rulffes was at Step 48F, and the salary the School
20 District wanted to pay him was at Step 48G. Dr. Goldman and Mr. Chandler did discuss giving
21 Dr. Rulffes a 5% stipend due to his increased responsibility. See Exhibit 10, School District's
22 reorganization chart. This chart indicated that certain positions were either eliminated or
23 consolidated with another position, resulting in a salary savings of approximately \$567,361.00
24 annually. Chandler was informed of the employment contract between Dr. Rulffes and the
25 School District in May 2001, and Chandler informed Dr. Goldman that the contract was
26 "illegal." Thereafter, any negotiations on the issue ceased.

27 Approval of the Rulffes employment contract was on the agenda for the School Board of
28 Trustees' meeting on June 14, 2001. Chandler appeared at that meeting and asked that the

1 contract not be approved; however, the contract was approved. Dr. Goldman also received a 5%
2 stipend increase in salary due to his added responsibility, but he did not enter into a separate
3 employment contract. Dr. Rulffes' prior position was considered "Deputy Superintendent/CFO,
4 Operations" and Dr. Goldman's prior position was "Deputy Superintendent/Instructions." Dr.
5 Rulffes' new position is "Deputy Superintendent, Chief Financial Officer, Business & Finance
6 Services Division." See Association Exhibit 2, Rulffes' contract of employment.

7 Chandler stated that the Rulffes' employment contract is different from the parties' CBA
8 due to the increase in salary since Dr. Rulffes cannot fulfill the criteria for Step 48G, and his
9 salary would actually be in the range of a Step 52. Prior changes and/or reclassifications had
10 always been negotiated in the past. It was pointed out that his contract was similar to the CBA in
11 that he would get automatic pay increases as would the other administrators. Chandler noted the
12 term of the CBA for the other administrators is one year, whereas Rulffes' contract term was
13 three years. Another difference is the right to receive money in lieu of insurance benefits; no
14 other administrator has that privilege. Another difference is the vacation buy back. Should
15 Rulffes have vacation time due to him, he can sell it back to the School District. Other
16 administrators can only sell back 5 days if they have accumulated 90 days or more of vacation
17 time. It was also noted that Dr. Rulffes is an "associate member" of the Association, with no
18 authority to vote on CBAs and cannot hold an office. As an "associate member" of the
19 Association, Dr. Rulffes did not ask the Association to negotiate his employment contract.

20 Upon cross examination, Chandler did agree that confidential employees are excluded
21 from the bargaining unit per statute, although the CBA does provide salary ranges and benefits
22 for them. Concerning the Association's agreement for Dr. Rulffes and Dr. Goldman to receive a
23 5% stipend for their increased responsibilities, nothing was reduced to a writing confirming that
24 agreement. Chandler admitted that the School District has no in-put as to the contents of the
25 Association's Bylaws and/or Constitution, nor can the School District vote on their approval or
26 be a signatory on the documents. Chandler also admitted that the Association cannot represent
27 confidential employees and the parties cannot waive the law concerning that.

28 ///

1 Upon questioning by the Board, Chandler admitted that the parties are negotiating a new
2 CBA and this agreement would have the new positions listed. Mr. Chandler also offered that the
3 School District General Counsel, William Hoffman, would be a confidential employee but is not
4 listed in CBA §16-6. He stated the School District can make a position a "confidential
5 employee" position, with the Association having the right to seek this Board's assistance if a
6 dispute arises concerning same.

7 Dr. Goldman was the second witness, and since approximately 1989/1990, he has been
8 the chief negotiator for the School District. Dr. Goldman stated Article 16 was intended to
9 provide the Superintendent of the School District with a way to change his "team" without
10 problems. It was designed to assure that if an administrator moved up to a higher position, with
11 higher pay, he/she would not lose that higher pay should he/she be returned to the prior lower
12 position. He called this "at-will" in the position, but not "at-will" in employment with the
13 School District. The employee would always be returned to the former position without a loss in
14 pay. Goldman also testified that the Superintendent has two cabinets, namely, administrative and
15 executive. Superintendent Garcia came to the School District after summer 2000.

16 Under Superintendent Garcia, there are two deputy superintendents, one in charge of
17 finance and one in charge of curriculum, rather than have numerous "assistant superintendents"
18 as found in CBA §16-6. Superintendent Garcia did not feel it was necessary to go to the
19 Association concerning the salary and responsibilities of Dr. Rulffes as he was a confidential
20 employee, and a confidential employee cannot be a member of the Association representing the
21 administrators bargaining unit. Superintendent Garcia told Dr. Goldman to discuss the Rulffes
22 situation with Chandler and to amicably resolve the issue if possible, e.g., by providing a 5%
23 stipend for the considerably increased responsibilities. Dr. Goldman stated he did not negotiate
24 the Rulffes contract, but that General Counsel Hoffman may have. Dr. Goldman acknowledged
25 that he received the 5% stipend, increase in salary, without a contract. He is also an Associate
26 Member of the Association.

27 In closing, the Association argued that an actual controversy exists, and that the
28 Association is attempting to protect employees' salaries. They feel a floodgate will once again be

1 opened, allowing the School District to negotiate contracts with any employee by claiming that
2 he/she is a confidential employee. By allowing these employees to enter into separate contracts,
3 the Association's members will be hurt and morale will suffer. The Association's members will
4 not receive the same benefits as potentially the other employees will receive. The Association
5 asks that the Board set limits as to what can be offered by the School District to confidential
6 employees. The Association did agree that the question of whether an employee is confidential
7 is truly a fact-based question. The Association would like to see the increased salary/step offered
8 to all of their members. At this time there are approximately 946 members, with approximately
9 925 regular members and 21 non-members (e.g., Associate Members). The current salary range
10 is approximately \$46,000 to \$110,000.00.

11 The School District argued that the Association is merely attempting to control salary
12 range for all employees, and argued that the Association does not have standing to bring this
13 action for confidential employees. The Association cannot represent confidential employees,
14 and this Board cannot determine the validity of the School Board of Trustees' regulations. The
15 construction and validity of a statute or regulation is a legal question for a court to decide.
16 Moody v. Manny's Auto Repair, 110 Nev. 320, 325, 871 P.2d 935 (1994); Sheriff v. Encoe, 110
17 Nev. 1317, 1319, 885 P.2d 596 (1994). Furthermore, the School Board of Trustees' decisions
18 should be given deference as to its interpretation of its own regulations. The School District
19 further argued that this is a new position, with increased responsibility more than ever assigned
20 before, and that such a position cannot be similar to anything existing in the parties' CBA. As to
21 insurance benefits, the School District is paying out the same amount for all employees.

22 The School District has the right to hire employees, especially confidential employees,
23 and it does not have to be for a one-year term. Superintendent Garcia has a four-year
24 employment contract. Dr. Rulffes is a confidential employee and his employment contract is
25 appropriate.

26 STATUTES AT ISSUE

27 NRS 288.140(2) states, in relevant part, the "recognition of an employee organization for
28 negotiation, pursuant to this chapter, does not preclude any local government employee who is

1 not a member of that employee organization from acting for himself with respect to any
2 condition of his employment"

3 NRS 288.170(4) states that "[C]onfidential employees of the local government employer
4 must be excluded from any bargaining unit but are entitled to participate in any plan to provide
5 benefits for a group that is administered by the bargaining unit of which they would otherwise be
6 a member."

7 NRS 288.170(6) states, "confidential employee means an employee who is involved in
8 the decisions of management affecting collective bargaining."

9 FINDINGS OF FACT

10 1. Two complaints were filed by the Association in 1990, with this Board, against the
11 School District, resulting in this Board's Orders #259 and #260. The Board, however, did not
12 hear the merits of the complaints as the parties resolved the underlying disputes. By stipulations,
13 the Board is thus not bound by those orders.

14 2. As part of that resolution, the parties' CBA contained a list of positions for
15 confidential employees, and Brian Cram was the Superintendent of the School District at that
16 time. (Exhibit 6.)

17 3. Carlos Garcia became Superintendent of the School District at some time after the
18 summer of 2000 and sought a reorganization of the confidential positions within his cabinets.
19 (Exhibit 10.)

20 4. The employee at issue in this matter is Dr. Rulffes, and the position he held previously
21 was listed in the CBA at §16-6-9; thereafter, Superintendent Garcia assigned more
22 responsibilities to Dr. Rulffes and sought to increase his salary.

23 5. Dr. Rulffes was at Step 48F and the salary the School District sought to pay him
24 would have been for employees at Step 48G or higher (Step 52). Dr. Rulffes, however, did not
25 fulfill the length of employment criteria necessary to achieve advancement to Step 48G.

26 6. The Association did not disagree with providing Dr. Rulffes with a 5% stipend
27 increase due to his increased workload. Dr. Edward Goldman received the 5% stipend, without
28 the necessity of an employment contract.

1 7. Dr. Rulffes is only an Associate Member of the Association.

2 8. There are a number of alleged differences between the Dr. Rulffes' employment
3 contract and other employees' CBA. Those difference include an increased Step (Step 52) which
4 is not available to other employees; Rulffes' contract term is 3 years, whereas others have only a
5 one-year term; Dr. Rulffes can sell his vacation time back to the School District, whereas others
6 have a restriction on what can be sold after a certain number of hours are accumulated; and Dr.
7 Rulffes has the right to receive additional money in lieu of insurance benefits, whereas others do
8 not.

9 9. The parties agree, statutorily, that confidential employees are excluded from the
10 bargaining unit.

11 10. Dr. Edward Goldman has been the chief negotiator for the School District since
12 approximately 1989/1990, and he is an Associate Member of the Association.

13 11. Dr. Goldman testified that the confidential positions listed in the CBA at §16-6
14 provide any Superintendent with the option of changing the members on his team, without
15 hurting the employees. Once an employee has been promoted and receives a higher salary, that
16 salary cannot be taken from him if he is restored to his/her former, lower position at the School
17 District. This was described as an "at-will" position in the Superintendent's cabinet, but not an
18 "at-will" position within the School District.

19 12. That the Association has 946 members, with approximately 925 regular members
20 and 21 Associate Members; and the current salary range is approximately \$46,000 to
21 \$110,000.00.

22 13. From the evidence presented, Dr. Rulffes is a confidential employee and is,
23 therefore, excluded from the subject bargaining unit.

24 14. NRS 288.140(2) states that "any local government employee who is not a member of
25 that employee organization [may act] for himself with respect to any condition of his
26 employment." That is what Dr. Rulffes did in the present situation with his contract with the
27 School District.

28 ///

1 15. Should any finding of fact be more properly construed as a conclusion of law, may it
2 be so deemed.

3 CONCLUSIONS OF LAW

4 1. The Local Government Employee-Management Relations Board has jurisdiction over
5 the parties and the subject matters of the complaint on file herein pursuant to the provisions of
6 NRS Chapter 288.

7 2. The Clark County School District is a local government employer as defined in NRS
8 288.060.

9 3. The Association is an employee organization as defined by NRS 288.040.

10 4. Clark County has recognized the Association as the employee representative for the
11 bargaining unit in question.

12 5. Confidential employees "must be excluded from any bargaining unit" to which he/she
13 may have been a member, but are entitled to "participate in any plan to provide benefits for a
14 group" pursuant to NRS 288.170(4).

15 6. Confidential employees are defined in NRS 288.170(6) as the "employee who is
16 involved in the decisions of management affecting collective bargaining."

17 7. Dr. Rulffes' current position is of "Deputy Superintendent, Chief Financial Officer,
18 Business & Finance Services Division."

19 8. Dr. Rulffes is a confidential employee and can not be a member of the Administrators'
20 bargaining unit.

21 9. NRS 288.140(2) allows employees to act for themselves "with respect to any
22 condition of his employment" in certain instances.

23 10. Should any conclusion be more properly construed as a finding of fact, may it be so
24 deemed.

25 ///

26 ///

27 ///

28 ///

DECISION AND ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. In his present position of Deputy Superintendent, Chief Financial Officer, Business & Finance Services Division, Dr. Rulffes is a confidential employee of the Clark County School District. (NRS 288.170(6).)

2. As a confidential employee, Dr. Rulffes cannot be a member of the bargaining unit of administrators represented by the Clark County Association of School Administrators. (NRS 288.170(4).)

3. Dr. Rulffes is entitled to participate in any plan to provide benefits for administrators represented by the CCASA. Ibid.

4. However, NRS Chapter 288 does not require Dr. Rulffes, or any confidential employee, to participate in any plan and, therefore, the Board concludes whether Dr. Rulffes participates in any plan or not is entirely up to his election. Ibid.

5. Further, the Board concludes that NRS 288.140(2) preserves the right of any employee not a member of the organization to act in his own behalf with respect to any condition of employment. Dr. Rulffes' associate membership in the CCASA raises the question of whether he is a member or not under the statutory language. The testimony of the CCASA representative indicated an associate member is only allowed to pay dues and attend meetings. No other privileges of membership attach; no representation, no opportunity to run for office in the organization, not recognized and be heard at meetings, nor to vote on matters considered by the organization (ratification of collective bargaining agreements). These circumstances do not appear to this Board sufficient to cloak Dr. Rulffes with "membership" in the CCASA as contemplated by the statute. Dr. Rulffes is within his statutory rights to "act for himself" to negotiate his own employment contract.

6. NRS 288.140(2) further requires that "any action taken on a request" be consistent with the terms of any applicable negotiated agreement. The Board notes that some terms of Dr. Rulffes' contract provide enhancements of provisions in the CCASA's collective bargaining agreement covering administrators. These enhancements appear to be consistent with the CBA,

1 and as here, in the absence of any evidence suggesting the local government employer engaged
2 in any prohibited practice under NRS 288.270, the Board finds the terms of Dr. Rulffes' contract
3 does not violate the Act.

4 7. The Board hereby enters judgement in favor of the Clark County School District with
5 each party to bear their own costs and fees.

6 DATED this 23rd day of January 2003.

7 LOCAL GOVERNMENT EMPLOYEE-
8 MANAGEMENT RELATIONS BOARD

9 BY: 
10

JOHN E. HICKS, ESQ., Chairman

11 BY: 
12

JANET TROST, ESQ., Vice-Chairman
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28